

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA-HQ-OAR-2003-0130]

RIN 2060-AH67

Protection of Stratospheric Ozone: Minor Amendments to the Regulations Implementing the Allowance System for Controlling HCFC Production, Import and Export

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA is proposing to amend the current regulations governing the production and trade of certain ozone-depleting substances to address issues concerning the export of previously imported material, heels, the exemption allowance petition process for HCFC-141b for military and space vehicle applications, and the definition for “importer.” We are proposing these minor adjustments to our regulations in response to requests from the regulated community, to ensure equitable treatment of stakeholders, and to reduce burden where the integrity of the requirements can still be sufficiently maintained. These proposed amendments appear in the “Rules and Regulations” section of this Federal Register as a direct final rule.

DATES: Comments must be submitted by [INSERT 30 DAYS FROM PUBLICATION], or by [INSERT DATE 45 DAYS FROM PUBLICATION] if a hearing is requested by [INSERT 10 DAYS FROM DATE OF PUBLICATION]. If requested, a hearing will be held on [INSERT 15

DAYS FROM DATE OF PUBLICATION] and the comment period will be extended until [INSERT 45 DAYS FROM DATE OF PUBLICATION].

ADDRESSES: Submit your comments, identified by Docket ID No. **EPA-HQ-OAR-2003-0130**, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- Email: a-and-r-Docket@epa.gov
- Fax: 202-566-1741
- Mail: Docket #, Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW. Washington, DC 20460.
- Hand Delivery: Docket #EPA-HQ-OAR-2003-0130, Air and Radiation Docket at EPA West, 1301 Constitution Avenue NW, Room B108, Mail Code 6102T, Washington, D.C. 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. **EPA-HQ-OAR-2003-0130**. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA

will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

FOR FURTHER INFORMATION CONTACT: Cindy Axinn Newberg, EPA, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205J), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460, (202) 343-9729, newberg.cindy@epa.gov.

SUPPLEMENTARY INFORMATION:

1) Under the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Protocol), as amended, the U.S. and other industrialized countries that are Parties to the Protocol have agreed to limit production and consumption of hydrochlorofluorocarbons (HCFCs) and to phase out consumption in a step-wise fashion over time, culminating in a complete phaseout in 2030. Title VI of the Clean Air Act Amendments of 1990 (CAAA) authorizes EPA to promulgate regulations to manage the consumption and production of HCFCs until the total phaseout in

2030. EPA promulgated final regulations establishing an allowance tracking system for HCFCs on January 21, 2003 (68 FR 2820). These regulations were amended on June 17, 2004 (69 FR 34024) to ensure U.S. compliance with the Montreal Protocol. Today's proposed action would amend aspects of the regulations that relate to exports of previously imported material, the import of HCFC heels, the HCFC-141b exemption allowance petition process, and the definition of "importer." We are proposing these minor adjustments to our regulations in response to requests from the regulated community, to ensure equitable treatment of stakeholders, and to reduce burden where the integrity of the requirements can still be sufficiently maintained.

In the "Rules and Regulations" section of this Federal Register, we are issuing these amendments as a direct final rule without prior proposal because we view this as a non-controversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule, or particular provisions of the rule, and the rule or the particular provisions will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

For further information, please see the information provided in the direct final action that is located in the "Rules and Regulations" section of this Federal Register.

2) Tips for Preparing Your Comments.

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

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I. Regulated Entities

These minor amendments to the HCFC allowance allocation system would affect the following categories:

Category	NAICS code	SIC code	Examples of regulated entities
Chlorofluorocarbon gas manufacturing	325120	2869	Chlorodifluoromethane manufacturers; Dichlorofluoroethane manufacturers; Chlorodifluoroethane manufacturers
Chlorofluorocarbon gas importers	325120	2869	Chlorodifluoromethane importers; Dichlorofluoroethane importers; Chlorodifluoroethane importers.
Chlorofluorocarbon gas exporters	325120	2869	Chlorodifluoromethane exporters; Dichlorofluoroethane exporters; Chlorodifluoroethane exporters
Polystyrene Foam Product Manufacturing	326140	3086	Plastics foam Products (Polystyrene Foam Products)

Category	NAICS code	SIC code	Examples of regulated entities
Urethane and Other Foam Product (Except Polystyrene) Manufacturing	326150	3086	Insulation and cushioning, foam plastics (except polystyrene) manufacturing

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, business organization, or other entity is regulated by this action, you should carefully examine these regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the “FOR FURTHER INFORMATION CONTACT” section.

II. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a "significant" regulatory action as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed rule is not a "significant regulatory action" within the meaning of the Executive Order and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. Instead, this NPRM proposes to decrease the frequency of one specific report and limit the range of types of containers subject to a specific regulatory requirement. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR Part 82 subpart A under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060-0498 (EPA ICR No. 2014.02). A copy of the OMB approved Information Collection Request (ICR) may be obtained from the Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW, Washington, DC 20460 or by calling (202) 566-1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of

information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.

The RFA generally requires an Agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small government jurisdictions.

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this proposed rule. EPA has also determined that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) a small business that is identified by the North American Industry Classification System (NAICS) Code in the Table below; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Category	NAICS Code	SIC Code	NAICS small business size standard (in number of employees or millions of dollars)
<u>1. Chemical and Allied Products, NEC</u>	<u>424690</u>	<u>5169</u>	<u>100</u>

After considering the economic impacts of this proposal on small entities, EPA concluded that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. None of the entities affected by this proposal are considered small as defined by the NAICS Code listed above. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal government and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a written statement is required under section 202, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Section 203 of the UMRA requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule. Section 204 of the UMRA requires the Agency to develop a

process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of \$100 million or more by State, local and tribal governments, in the aggregate, or by the private sector, in any one year. The provisions in this proposed rule fulfill the obligations of the United States under the international treaty, *The Montreal Protocol on Substances that Deplete the Ozone Layer*, as well as those requirements set forth by Congress in the Clean Air Act. Viewed as a whole, all of these proposed amendments do not create a Federal mandate resulting in costs of \$100 million or more in any one year for State, local and tribal governments, in the aggregate, or for the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this proposal contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under section 203. Finally, because this proposal does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials under section 204.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the

national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today’s proposal is expected to primarily affect producers, importers and exporters of HCFCs. Thus, the requirements of section 6 of the Executive Order do not apply. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This proposed rule does not have tribal implications, as specified in Executive Order 13175. This proposal does not significantly or

uniquely affect the communities of Indian tribal governments. It does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Applicability of Executive Order 13045: Protection of Children from Environmental Health & Safety Risks

Executive Order 13045: “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. While this proposal is not subject to the Executive Order because it is not economically significant as defined in E.O 12866, we nonetheless have reason to believe that the environmental health or safety risk addressed by this action may have a disproportionate effect on children. Depletion of stratospheric ozone results in greater transmission of the sun’s ultraviolet (UV) radiation to the earth’s surface. The following studies describe the effects on children of excessive exposure to UV radiation: (1) Westerdahl J, Olsson H, Ingvar C. “At what age do sunburn episodes play a crucial role for the development of malignant melanoma,” *Eur J Cancer* 1994; 30A: 1647-54; (2) Elwood JM Japson J. “Melanoma and sun exposure: an overview of published studies,” *Int J Cancer* 1997; 73:198-203; (3) Armstrong BK, “Melanoma: childhood or lifelong sun exposure,” In: Grobb JJ, Stern RS Mackie RM, Weinstock WA, eds. “Epidemiology, causes and prevention of skin diseases,” 1st ed. London, England: Blackwell

Science, 1997: 63-6; (4) Whieman D., Green A. "Melanoma and Sunburn," Cancer Causes Control, 1994: 5:564-72; (5) Heenan, PJ. "Does intermittent sun exposure cause basal cell carcinoma? A case control study in Western Australia," Int J Cancer 1995; 60: 489-94; (6) Gallagher, RP, Hill, GB, Bajdik, CD, et. Al. "Sunlight exposure, pigmentary factors, and risk of nonmelanocytic skin cancer I, Basal cell carcinoma." Arch Dermatol 1995; 131: 157-63; (7) Armstrong, DK. "How sun exposure causes skin cancer: an epidemiological perspective," Prevention of Skin Cancer. 2004. 89-116. The public is invited to submit or identify peer-reviewed studies and data, of which EPA may not be aware, that assessed results of early life exposure to UV radiation.

This proposal concerns minor changes to the existing regulatory regime for the class II controlled substances. These minor changes are not expected to increase the impacts on children's health from stratospheric ozone depletion.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 Fed. Reg. 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. The National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104_113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business

practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Reporting and recordkeeping requirements.

DATE:

Stephen L. Johnson,
Administrator.